

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

LANA EISENHAUER,	)	
	)	
Plaintiff,	)	4:14CV3187
	)	
v.	)	
	)	<b>MEMORANDUM</b>
DOLLAR GENERAL	)	<b>AND ORDER</b>
CORPORATION,	)	
	)	
Defendant.	)	
	)	

Plaintiff has filed a Notice of Voluntary Dismissal Without Prejudice Pursuant to Federal Rule of Civil Procedure 41(a)(1), stating that because Defendant has not filed a motion for summary judgment, Plaintiff is entitled to dismiss this diversity action without prejudice and without an order of the court. (Filing [11](#).)

Defendant objects to Plaintiff's notice (Filing [12](#)), pointing out that this removed case was originally filed in September 23, 2013, in the District Court of Cuming County, Nebraska; Defendant first sought removal in October 2013, but this court remanded the matter to state district court for lack of subject matter jurisdiction because the amount-in-controversy requirement had not been met (Filing [1-1](#) at CM/ECF p. 19); Defendant filed an answer in state district court on February 14, 2014 (Filing [1-1](#) at CM/ECF p. 20); recent deposition testimony revealed that Plaintiff's damage request exceeds \$75,000; this matter was again removed to this court in September 2014; Defendant has taken written discovery, deposed Plaintiff, and engaged in informal settlement negotiations; and Plaintiff's Notice of Voluntary Dismissal was filed just two weeks before the summary judgment deadline. Further, trial has been set for September 21, 2015. (Filing [7](#), Final Progression Order.)

I shall deny Plaintiff's Notice of Voluntary Dismissal Without Prejudice (Filing [11](#)) because it was filed long after Defendant's answer. [Fed. R. Civ. P. 41\(a\)\(1\)\(A\)\(i\)](#) ("the plaintiff may dismiss an action without a court order by filing . . . a notice of dismissal *before the opposing party serves either an answer or a motion for summary judgment*" (emphasis added)).<sup>1</sup>

IT IS ORDERED that Plaintiff's Notice of Voluntary Dismissal Without Prejudice Pursuant to Federal Rule of Civil Procedure 41(a)(1) (Filing [11](#)) is denied.

DATED this 28<sup>th</sup> day of April, 2015.

BY THE COURT:

*Richard G. Kopf*

Senior United States District Judge

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<sup>1</sup>Plaintiff apparently reads this rule to mean that a notice of voluntary dismissal may be filed at any time, as long as it is filed before a motion for summary judgment. This is incorrect. The rule's reference to "either an answer or a motion for summary judgment" refers to cases in which "[a] motion for summary judgment may be forthcoming prior to answer." Fed. R. Civ. P. 41 Note, Subdivision (a), 1946 Amendment.

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